

1989

# State of Utah v. David Villa Armenta : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Paul Van Dam; Utah Attorney General; Attorney for Respondent.

James L. Shumate; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellant, *Utah v. Armenta*, No. 890368 (Utah Court of Appeals, 1989).

[https://digitalcommons.law.byu.edu/byu\\_ca1/1971](https://digitalcommons.law.byu.edu/byu_ca1/1971)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

U  
D. ELEMENT  
KFU

.A10

IN THE UTAH COURT OF APPEALS

**Defendant-Appellant.**

Appeal from a Judgment, Sentence, and Commitment of the Fifth District Court, Iron County, State of Utah, of a Third-Degree Felony charge of Possession of a Controlled Substance with Intent to Distribute, the Honorable J. Philip Eves, presiding.

PAUL VAN DAM  
Utah Attorney General  
Attorney for Plaintiff-Respondent  
236 State Capitol Building  
Salt Lake City, Utah 84114

---

IN THE UTAH COURT OF APPEALS

---

THE STATE OF UTAH,	)	
	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	Case No. 890368-CA
	)	
DAVID VILLA ARMENTA,	)	Classification Priority 2
	)	
Defendant-Appellant.	)	

---

BRIEF OF APPELLANT

---

Appeal from a Judgment, Sentence, and Commitment of the Fifth District Court, Iron County, State of Utah, of a Third-Degree Felony charge of Possession of a Controlled Substance with Intent to Distribute, the Honorable J. Philip Eves, presiding.

---

JAMES L. SHUMATE  
Attorney for Defendant-Appellant  
110 North Main, Suite H  
P.O. Box 623  
Cedar City, Utah 84720  
Telephone: (801) 586-3772

PAUL VAN DAM  
Utah Attorney General  
Attorney for Plaintiff-Respondent  
236 State Capitol Building  
Salt Lake City, Utah 84114

## TABLE OF CONTENTS

JURISDICTION OF THE COURT OF APPEALS . . . . .	1
NATURE OF THE PROCEEDINGS . . . . .	1
ISSUES PRESENTED ON APPEAL . . . . .	1
DETERMINATIVE STATUTES . . . . .	1
NATURE OF THE CASE . . . . .	2
COURSE OF THE PROCEEDINGS . . . . .	2
DISPOSITION AT TRIAL COURT . . . . .	2
STATEMENT OF FACTS . . . . .	2
SUMMARY OF ARGUMENT . . . . .	3
ARGUMENT . . . . .	3
POINT I    THE TRIAL COURT ABUSED ITS DISCRETION BY SENTENCING THIS DEFENDANT TO THE UTAH STATE PRISON WHEN THE CO-DEFENDANTS WERE BASICALLY RELEASED BACK TO MEXICO . . . . .	3
CONCLUSION . . . . .	5
ADDENDUM . . . . .	7

## TABLE OF AUTHORITIES

### CASES

<u>Burleson v. State</u> , 543 P.2d 1195 (Alaska, 1975) . . . . .	4
<u>People v. Henley</u> , 539 P.2d 496 (Colo. App., 1975) . . . . .	4
<u>State v. Collins</u> , 528 P.2d 829 (Arizona, 1974) . . . . .	4
<u>State v. Cook</u> , 714 P.2d 296 (Utah, 1986) . . . . .	4
<u>State v. Huelsman</u> , 588 P.2d 394 (Hawaii, 1978) . . . . .	4
<u>State v. Jolivet</u> , 713 P.2d 707 (Utah, 1986) . . . . .	4
<u>Yates v. State</u> , 723 P.2d 37 (Wyoming, 1986) . . . . .	4

### STATUTES AND RULES

78-2a-3(f) Utah Code Annotated, 1953, as amended . . . . .	1
--	---

### CONSTITUTIONS

14th Amendment of the United States Constitution . . . . .	1
--	---

### OTHER AUTHORITIES

3A AM Jur 2d Aliens and Citizens, Section 1955 . . . . .	5
--	---

---

IN THE UTAH COURT OF APPEALS

---

THE STATE OF UTAH,	)	
	)	
Plaintiff-Respondent,	)	
	)	Case No. 890368-CA
vs.	)	
	)	
DAVID VILLA ARMENTA,	)	
	)	
Defendant-Appellant.	)	

---

JURISDICTION OF THE COURT OF APPEALS

The Jurisdiction of the Court of Appeals is established by 78-2a-3(f) Utah Code Annotated, 1953, as amended.

NATURE OF THE PROCEEDINGS

This is an appeal from a Judgment, Sentence and Commitment from the Fifth Judicial District Court, Iron County, State of Utah, the Honorable J. Philip Eves presiding. The conviction is for the offense of Possession of a Controlled Substance with the Intent to Distribute, a Third-Degree Felony

ISSUES PRESENTED ON APPEAL

Was the Defendant accorded the equal protection of the law when he was sentenced to the Utah State Prison apparently on the basis of being a United States' citizen compared to non-citizens who were released?

DETERMINATIVE STATUTES

The provision which is believed to be determinative in this matter is the Fourteenth Amendment of the United States Constitution. That amendment is reproduced in the addendum.

#### NATURE OF THE CASE

This is an appeal from a Judgment, Sentence and Commitment dated March 22, 1989, and signed by the Honorable J. Philip Eves, Judge of the Fifth Judicial District Court, Iron County, State of Utah.

#### COURSE OF THE PROCEEDINGS

The Defendant plead guilty to the Third-Degree Felony offense of possession of a controlled substance with intent to distribute for value before the Honorable J. Philip Eves. The Defendant was charged with two co-defendants, a husband and wife by the name of Suarez. The Suarezes were illegal aliens and were held in the Iron County Jail for approximately seven months and then released to immigration authorities for deportation to Mexico. Mr. Suarez plead guilty to the same offense as this defendant. The information against Mrs. Suarez was dismissed.

#### DISPOSITION AT TRIAL COURT

The Defendant was sentenced to the Utah State Prison or a period of time not to exceed five (5) years.

#### STATEMENT OF FACTS

At approximately 9 a.m. on April 21, 1987, Utah Highway Patrol troopers stopped a van with California license plates which was traveling northbound on Interstate 15 near Cedar City, Utah.(Motion to Suppress Transcript, July 19, 1988, hereafter referred to as "T" p.10-14) The Defendant, David Villa Armenta, was driving the van.(T. 15) Upon stopping the vehicle the troopers asked permission to search the van.(T. 41) Permission

was given by Mr. Armenta (T. 42) and the troopers located inside the van, behind false paneling (T. 45-46), approximately four hundred twenty (420) pounds of marijuana. Arrested along with the Defendant were Juan and Elizabeth Suarez, (T. 48) two Mexican nationals. The Defendant is a citizen of the United States. The Defendant Juan Suarez plead guilty to a Third-Degree Felony offense of Possession of a Controlled Substance with Intent to Distribute for Value but was not incarcerated in the Utah State Prison. He was deported to Mexico where he is probably at liberty at the present time. The Defendant Elizabeth Suarez was released after being held in the Iron County Jail for seven months. The Information against her was dismissed. The pertinent orders regarding the Suarez couple are included herein in the Addendum.

#### SUMMARY OF ARGUMENT

This Defendant was not accorded equal protection of the law when he was sentenced to the Utah State Prison and co-defendants were released to return to their home country, Mexico, in the custody of the United States Immigration and Naturalization Service.

#### ARGUMENT

##### POINT I

THE TRIAL COURT ABUSED ITS DISCRETION BY SENTENCING THIS DEFENDANT TO THE UTAH STATE PRISON WHEN THE CO-DEFENDANTS WERE RETURNED IN CUSTODY BACK TO MEXICO.

The writer of this brief is clearly aware of the broad discretion which is granted to courts in sentencing. The case of



State v. Jolivet, 713 P.2d 707 (Utah, 1986), stands for the proposition that courts have broad discretion in sentencing. However, an abuse of discretion can be made out when there is an instance of unconstitutional over-reaching of discretionary functions,[ State v. Huelsman, 588 P.2d 394,(Hawaii, 1978)] and this Defendant-Appellant claims that occurred here.

This writer concedes that there is no present authority in Utah statutory or case law to support the Appellant's claim in this appeal. However, this appears to be a case of first impression in this jurisdiction, and for that reason, the Court is urged to consider this matter even though there is no Utah legal authority to support this claim. State v. Cook, 714 P.2d 296 (Utah, 1986)

Other states have considered cases in which co-defendants have received substantially different terms of incarceration for involvement in the same offense. Generally the courts of surrounding states have not reversed sentences of defendants when co-defendants have received lighter sentences where there have been differences in background [Burleson v.State, 543 P.2d 1195 (Alaska, 1975)], age and prior record [State v. Collins, 528 P.2d 829 ( Arizona, 1974)], degree of involvement [People v. Henley, 539 P.2d 496 (Colo. App., 1975), probation risk and attitude of the defendant [Yates v. State, 723 P.2d 37 (Wyoming, 1986)].

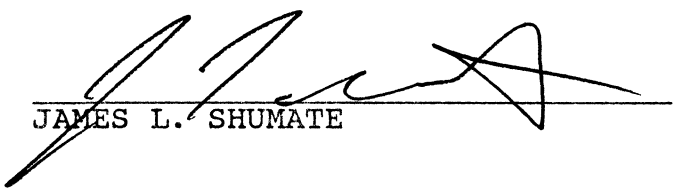
This Appellant takes the position that there were no such distinctions drawn between himself and the co-defendants

Suarez in his case. The only distinction of note is that Mr. Armenta is a United States citizen and the Suarezes are Mexican citizens. There was no pre-sentence report prepared for the Suarezes so that background, age, prior record, attitude, probation risk or degree of involvement could not have been considered by the trial court. Mr. Armenta respectfully asks this Court to hold that citizenship alone is a suspect classification which cannot withstand an equal protection analysis. Aliens within the United States are accorded the same rights as citizens, (3A Am Jur 2d Aliens and Citizens, Section 1955) so it should only follow that a citizen such as Mr. Armenta should also be at liberty, even if under the requirements of probation, when alien co-defendants are at liberty.

#### CONCLUSION

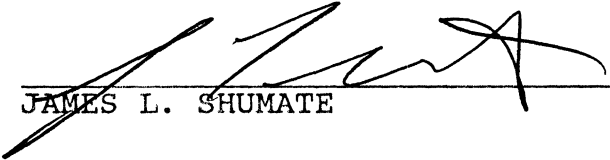
For the reasons set forth above, this Appellant respectfully requests this Court to reverse the sentence of the trial court and discharge him. In the alternative, the Appellant should at least be given the privilege of probation under reasonable conditions.

DATED this 15 day of September, 1989.

  
JAMES L. SHUMATE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to Mr. Paul Van Dam, Utah Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, this 15 day of September, 1989, first class postage fully prepaid.

  
\_\_\_\_\_  
JAMES L. SHUMATE

## AMENDMENT XIV

### Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]
4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

### Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FIFTH JUDICIAL DIST COURT  
IRON COUNTY  
**FILED**  
DEC 27 1988

SCOTT M. BURNS - USB #4283  
Iron County Attorney  
97 North Main, Suite #1  
P.O. Box 428  
Cedar City, Utah 84720  
Telephone: (801) 586-6694

CLERK  
*Cecilia A. Johnson* DEPUTY

---

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,  
STATE OF UTAH

---

STATE OF UTAH,	)	JUDGMENT, SENTENCE, AND
	)	COMMITMENT
Plaintiff,	)	
vs.	)	
JUAN SUAREZ,	)	Criminal No. 1200
Defendant.	)	

---

The Defendant, JUAN SUAREZ, having entered a plea of guilty to the offense of Unlawful Possession of a Controlled Substance (Marijuana) in Excess of Sixteen Ounces, a Third-Degree Felony, on December 20, 1988, and the Court having accepted said plea, and thereafter the matter having come on for sentencing at the request of the Defendant and his attorney, James Esparza, and the Court having called said matter on for sentencing on December 20, 1988, in Parowan, Utah, and the above-named Defendant, JUAN SUAREZ, having appeared before the Court, together with his counsel of record, James Esparza, and the State of Utah having appeared by and through Iron County Attorney Scott M. Burns, and the Court having heard statements from the Defendant, the Defendant's counsel, and the State of Utah by and through the Iron County Attorney, and being fully advised in the premises,

now makes and enters the following Judgment, Sentence, and Commitment, to wit:

**JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, JUAN SUAREZ, has been convicted upon his plea of guilty to the offense of UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE (MARIJUANA) IN EXCESS OF SIXTEEN OUNCES, a Third-Degree Felony, and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

**SENTENCE**

IT IS HEREBY ORDERED that the Defendant, JUAN SUAREZ, is hereby sentenced to a term of incarceration in the Iron County Jail for a period of one (1) year, with credit for time served, and any and all further incarceration to be waived upon the arrival of immigration officers to return the Defendant to Mexico.

IT IS FURTHER ORDERED that upon the arrival and contact of immigration officials, the Defendant shall immediately consent and agree to accompany said immigration officials and cooperate in all deportation proceedings.

IT IS FURTHER ORDERED that no fine be imposed and that no terms and conditions of probation be imposed.

COMMITMENT

TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH:

YOU ARE HEREBY COMMANDED to take the Defendant, JUAN SUAREZ, and deliver him to the Iron County Jail, there to be held under the provisions of the foregoing Judgment, Sentence, and Commitment.

DATED this 27<sup>th</sup> day of December, 1988.

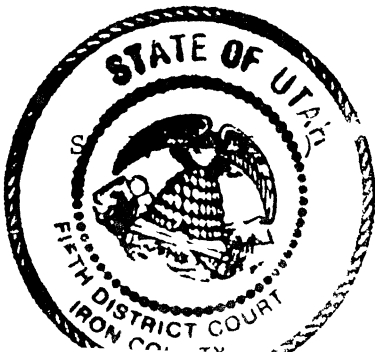
J. Philip Eves  
J. PHILIP EVES  
District Court Judge

CERTIFICATE

STATE OF UTAH     )  
                          :SS.  
COUNTY OF IRON    )

I, DAVID I. YARDLEY, Iron County Clerk, and Clerk of the Fifth Judicial District Court in and for Iron County, State of Utah, hereby certify that the foregoing is a full, true and exact copy of the original Judgment, Sentence, and Commitment in the case entitled State of Utan vs. Juan Suarez, Criminal No. 1200, now on file and of record in my office.

WITNESS my hand and the seal of said office in Parowan, County of Iron, State of Utah, this 28<sup>th</sup> day of December, 1988.



David I. Yardley  
DAVID I. YARDLEY  
Iron County Clerk

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a full, true, and correct copy of the within and foregoing Judgment, Sentence, and Commitment to Mr. James Esparza, Attorney for Defendant, at 333 South Denver Street, Salt Lake City, Utah 84111; and to Ms. Pat Yengich, Classifications Review Officer, Iron County/Utah State Correctional Facility, at 2136 North Main, Cedar City, Utan 84720; by first-class mail, postage fully prepaid, on this 3rd day of January, 1989.

Calleen Mason  
Secretary



SCOTT M. BURNS - USB #4283  
Iron County Attorney  
97 North Main, Suite #1  
P.O. Box 428  
Cedar City, Utan 84720  
Telephone: (801) 586-6694

FIFTH JUDICIAL DIST. COURT  
IRON COUNTY  
**FILED**

DEC 27 1988

Cecilia A. Johnson CLERK  
DEPUTY

---

IN THE FIFTH JUDICIAL DISTRICT COURT,  
IN AND FOR IRON COUNTY, STATE OF UTAH

---

STATE OF UTAH,	)	<b>MOTION FOR DISMISSAL</b>
	)	<b>AND ORDER</b>
Plaintiff,	)	
vs.	)	
ELIZABETH SUAREZ,	)	Criminal No. 1200
Defendant.	)	

---

COMES NOW the State of Utah, by and through Iron County Attorney Scott M. Burns, and hereby moves the Court pursuant to Sections 77-2-4 and 77-35-25, Utah Code Annotated, 1953 as amended, for an Order dismissing with prejudice the Information in the above-entitled action against the Defendant, ELIZABETH SUAREZ, and for an Order that she be held in the Iron County/Utah State Correctional Facility for immediate deportation to Mexico. This Motion is made in the furtherance of justice, for substantial cause, and upon the following grounds:

Further investigation revealed that it may be difficult to prove beyond a reasonable doubt that hte Defendant, ELIZABETH SUAREZ, had knowledge of the marijuana being in the van.

DATED this 20<sup>th</sup> day of December, 1988.

Scott M. Burns  
SCOTT M. BURNS  
Iron County Attorney

ORDER

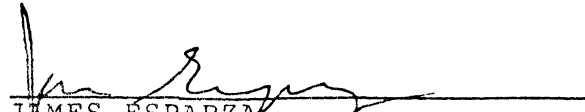
GOOD CAUSE APPEARING, IT IS ORDERED that the Information in the above-entitled matter against Defendant, ELIZABETH SUAREZ, be dismissed with prejudice for the reason shown, and that she be held at the Iron County/Utah State Correctional Facility pending immediate deportation.

DATED this 20<sup>th</sup> day of December, 1988.

  
J. PHILIP EVES  
District Court Judge

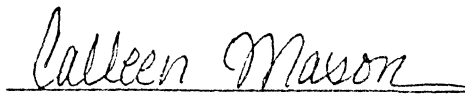
APPROVED AS TO FORM  
AND CONTENT:

  
SCOTT M. BURNS  
Iron County Attorney

  
JAMES ESPARZA  
Attorney for Elizabeth Suarez

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a full, true, and correct copy of the within and foregoing MOTION FOR DISMISSAL AND ORDER to Mr. James Esparza, Attorney for Defendant Elizabeth Suarez, at 333 South Denver Street, Salt Lake City, Utah 84111, by first-class mail, postage fully prepaid, on this 20<sup>th</sup> day of December, 1988.

  
Calleen Maxon  
Secretary